APPENDIX

Statute Involved. "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000,00, or imprisoned not more than two years, or both."

Criminal Code, § 37, U. S. C. A. Title 18, § 88.

BRIEF IN SUPPORT OF PETITION

As pointed out by the Circuit Court, (R. 90) petitioner was convicted and sentenced of the crime of conspiracy under an indictment which charged:

"- - - - commencing on or about January 1, 1944, and continuing down to date of indictment November 29, 1944, (R. 1-7) within the District and Division aforesaid, (Northern District of Georgia) **and at divers other places** to the grand jurors unknown, petitioner and Clyde Ramey as defendants, did in violation of Title 18, § 88, United States Code Annotated (Criminal Code, § 37) - - - - conspire, combine, confederate and agree between themselves and Claude Guest named as a co-conspirator - - - - but not as a defendant, **and with a person or persons to Grand Jurors unknown,** to violate Title 3, § 2, (a) of the Second War Powers Act and Sugar Rationing Order No. 3 - - - -." (R. 90-91).

Among the overt acts charged in the Georgia indictment was that on or about February 10, 1944, within the Northern District of Georgia petitioner had in his possession 4000 number 30 sugar rationing stamps having a value of 5 pounds that were not genuine,

acquired by him in a manner not authorized by law. (R. 3). During the time between February 10, 1944, and February 21, 1944, petitioner took delivery of and had in his possession 20,000 pounds of sugar in violation of Sugar Rationing Order No. 3. (R. 5).

Among the overt acts charged in the North Carolina indictment was that David F. Underwood, a joint defendant in that indictment and a co-conspirator, purchased from T. G. Boyd 40,000 pounds of rationed sugar and in exchange therefor gave counterfeit coupons. (R. 17). On or about January 1, 1944, petitioner, Bill Hunnicutt, illegally acquired and possessed approximately 100,000 pounds of rationed sugar for which he gave in exchange counterfeit sugar ration coupons. (R. 18).

The North Carolina indictment charged that this defendant conspired and confederated with his co-defendanst "and with divers other persons whose names are to the grand jurors unknown" to commit the offense charged. (R. 15).

That the two indictments had to do with a violation of the same Statute is condeded by the Court below. (R. 92). In support of the special plea petitioner under oath testified that he purchased counterfeit sugar rationing coupons at Toccoa, Georgia; that he furnished Underwood, a co-defendant these with which to purchase from T. G. Boyd 40,000 pounds of rationed sugar; that Boyd was going to acquire sugar at Waynesville, North Carolina, to be delivered to him at Clayton, Georgia, and that he never entered into more than one arrangement, agreement or conspiracy to violate that order and that was the one involved in the North Carolina transaction. (R. 20-213 - - - Record 32).

We submit under these facts appearing from the testimony, the evidence of the purchase of the counterfeit sugar ration coupons at Toccoa, Georgia, the delivery of

them to David F. Underwood in North Carolina, and the delivery by him of sugar to Hunnicutt at Clayton, Georgia, would have constituted overt acts admissible in evidence under either the indictment in North Carolina or the indictment in Georgia and would have been sufficient to support a conviction upon either. This being true the special plea should have been sustained and the decision of the Circuit Court is in error. Short v. United States, 91 Fed. (2d) 614.

In case just cited it was held:

"Where prior indictment set up in plea of former jeojardy is indefinite as to offense charged, as in case of alleged conspiracy between named defendants and others to grand jurors unknown, identity of offenses charged in such indictment and present indictment may be shown by parol."

A single agreement to commit an offense does not become several conspiracies because it continues over a period of time.

United States v. Kissell, 218 U. S. 601, 54 L. E. 1168.

" - - - - when a single agreement to commit one or more substantive crimes is evidenced by an overt act, as the statute requires, the precise nature and extent of the conspiracy must be determined by reference to the agreement which embraces and defines its objects. Whether the object of a single agreement is to commit one or many crimes, it is in either case that agreement which constitutes the conspiracy which the statute punishes. The one agreement cannot be taken to be several conspiracies because it envisages the violation of several statutes rather than one."

Braverman v. United States, 317 U. S. 49, 87 L. E. 23.

The Statute under which petitioner was indicted to the effect:

"If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined - - - -," should not be given a construction authorizing a trial and conviction for conspiracy based upon the number of overt acts. While it is true that an overt act is necessary to complete the crime it is not true that the government is confined to proof of the particular overt act set out in the indictment, according to the decision in Marcus et al, v. United States, 20 Fed. (2d) 454. (C. C. A. 3).

The Government may indict and convict a defendant for a conspiracy when completed by one overt act. It cannot re-indict and convict for the same conspiracy upon each overt act.

United States v. Sall, 116 Fed. (2d) 745.

No person can be subjected for the same offense to be twice put in jeopardy.

U. S. Constitution, Amendment 5, U. S. C. A. Constitution, Art. 1 § 10 to Amendment 13, paragraph 2, page 491.

It is submitted that petitioner was tried and convicted twice upon evidence that would have been sufficient to convict upon either indictment. The decision complained of should be reviewed and corrected.

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